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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 32/14, in which the Council requested the United Nations High Commissioner for Human Rights, as Co-Chair of the Global Migration Group Working Group on Migration, Human Rights and Gender, to continue to develop principles and practical guidance on the protection of the human rights of migrants in vulnerable situations within large and/or mixed movements, on the basis of existing legal norms, and to report thereon to the Human Rights Council at its thirty-fourth session.

In the present report, the High Commissioner describes the rationale for and progress of the principles and practical guidance to date. He presents a draft set of principles derived from international human rights law and related branches of law, as applicable. The present report should be read in conjunction with the related conference room paper outlining draft guidelines complementing each principle. The draft guidelines are designed to provide guidance derived from international best practice to States and other stakeholders on upholding the human rights of migrants in vulnerable situations.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 32/14, in which the Council requested the United Nations High Commissioner for Human Rights, as Co-Chair of the Global Migration Group Working Group on Migration, Human Rights and Gender Equality, to continue to develop principles and practical guidance on the protection of the human rights of migrants in vulnerable situations within large and/or mixed movements, on the basis of existing legal norms, and to report thereon to the Human Rights Council at its thirty-fourth session.

2. Accordingly, on 27 October 2016, the Office of the United Nations High Commissioner for Human Rights (OHCHR) addressed a note verbale to Member States and intergovernmental and non-governmental organizations, seeking their views and information on the issue. Written submissions were received from States, intergovernmental organizations, non-governmental organizations and individual experts.[1]

3. The Global Migration Group Working Group on Migration, Human Rights and Gender Equality, led by the High Commissioner as Co-Chair, is developing the principles and guidelines through a human rights-based, multi-stakeholder, expert process, which is open to the involvement of all relevant actors.[2] This initiative reflects the primary stated purpose of the Global Migration Group, which is "to promote the wider application of all relevant international and regional instruments and norms relating to migration" and "to encourage the adoption of more coherent, comprehensive approaches to the issue of international migration".[3]

4. The draft principles and guidelines have already been referenced in reports to the Human Rights Council and General Assembly (see A/HRC/33/67, and A/71/285, para. 106). States have acknowledged and called for the continuation of the process of developing the principles and guidelines (see the New York Declaration for Refugees and Migrants, para. 51 and Council resolution 32/14).

5. In view of considerations of space, the present report provides an introduction and 20 draft principles, as derived from international human rights law. The report should be read in conjunction with the related conference room paper outlining a set of draft guidelines, which complement each principle.[4] The principles and guidelines are currently

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[1] In addition to submissions from a large number of non-governmental organizations and individual experts, submissions were received from the following States: Australia, Cuba, Ghana, Iraq, Italy, Japan, Lebanon, Mexico, Peru, Qatar, Serbia, Slovakia, Slovenia, Sweden, Turkey and the European Union. The submissions can be found on the migration page of the OHCHR website at www.ohchr.org/EN/Issues/Migration/Pages/largeandormixedmovements.aspx.

[2] Members of the Working Group on Migration, Human Rights and Gender Equality include the International Labour Organization (ILO), the International Organization for Migration (IOM), OHCHR, the United Nations Educational, Scientific and Cultural Organization (UNESCO), the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Children's Fund (UNICEF), the United Nations Office on Drugs and Crime, the United Nations University, the United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and the World Health Organization. The group is co-chaired by OHCHR and UN-Women.

[3] See www.globalmigrationgroup.org/system/files/uploads/documents/Final_GMG_Terms_of_Reference_prioritized.pdf and www.globalmigrationgroup.org/what-is-the-gmg.

[4] Each principle is illustrated by a set of related practical interventions, "promising practices", which are examples of measures that have been implemented by States and other stakeholders and are intended to encourage practical action to give effect to the principles and guidelines.

in draft form and the present document is being presented as a progress report, pursuant to the request of the Human Rights Council. Since many terms used in global discussions in this area have required clarification, a limited glossary of key terms used in the report and the principles and guidelines has been included in the annex to the present document.

II. Background

6. Around the world, many millions of migrants and refugees are in a vulnerable human rights situation, including in the context of large and/or mixed movements.

7. In the New York Declaration for Refugees and Migrants, the General Assembly recognized the complex reasons for contemporary movement: "Since earliest times, humanity has been on the move. Some people move in search of new economic opportunities and horizons. Others move to escape armed conflict, poverty, food insecurity, persecution, terrorism, or human rights violations and abuses. Still others do so in response to the adverse effects of climate change, natural disasters (some of which may be linked to climate change) or other environmental factors. Many move, indeed, for a combination of these reasons."[5] The Secretary-General has also noted in this regard that the gradual expansion of refugee protection notwithstanding, many people are compelled to leave their homes for reasons that do not fall within the refugee definition in the Convention relating to the Status of Refugees (see A/70/59, para. 18).

8. While migration can be a positive and empowering experience for individuals and communities and can benefit countries of origin, transit and destination, it is clear that precarious movements of people are a serious human rights concern (see A/HRC/31/35). Although they might fall outside the specific legal category of refugee, migrants may need particular attention to be paid to the respect, protection and fulfilment of their human rights. Some will need specific protection as a result of the conditions they are leaving behind, the circumstances in which they are compelled to move and in which they are received, and/or according to specific characteristics such as age, gender, disability or health status. It is these people on the move and these situations of movement that are the focus of the current principles and guidelines.[6]

9. Recognizing that all people on the move are rights holders, entitled to the equal protection of their rights under international human rights law and related standards, it is important to uphold existing protections for specific groups that are established in international law. Refugees and asylum seekers are entitled to specific protection under international refugee law.[7] The human rights and particular needs of other groups of individuals, such as trafficked persons, migrant workers, stateless persons and persons with disabilities, have similarly been recognized in specific international instruments.[8] The development of principles and guidelines is thus without prejudice to the specific rights of particular groups who are part of such movements.

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[5] See also the preamble to the Paris Agreement under the United Nations Framework Convention on Climate Change.

[6] For further background on the rationale for the principles, see A/HRC/33/67.

[7] Including the Convention relating to the Status of Refugees and its 1967 Protocol.

[8] Specifically, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, ILO Migration for Employment Convention (Revised), 1949 (No. 97); ILO Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143) the Convention relating to the Status of Stateless Persons and the Convention on the Rights of Persons with Disabilities.

10. When the international community adopted the Universal Declaration of Human Rights on 10 December 1948, it was accepted as a common standard of achievement for all peoples and nations, spelling out for the first time in human history the minimum civil, political, economic, social and cultural rights that all human beings should enjoy. The International Bill of Human Rights (the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) makes exceptions between nationals and non-nationals in respect of only two rights, and even then only in limited circumstances.

11. Human rights are universal, inalienable, indivisible and interdependent. The international human rights framework is clear that in order to give effect to those rights and to uphold the fundamental principle of non-discrimination, the unique and individual circumstances of each person must be considered by duty bearers.[9] By becoming parties to international human rights treaties, States assume obligations under international law and undertake to put in place domestic measures and legislation compatible with their treaty obligations.[10] Those obligations have practical consequences for municipal authorities and local governments that may be required by domestic law to uphold them. States are also responsible for the human rights consequences of the actions, or failure to act, of private actors, including corporations, civil society actors and private security contractors, if they fail to take appropriate steps to prevent human rights abuses they knew or should have known about, or to investigate and punish those abuses, and provide compensation.

A. The concept of a "migrant in a vulnerable situation"

12. The concept of a "migrant in a vulnerable situation" may be understood as a range of factors that are often intersecting, can coexist simultaneously and can influence and exacerbate each other. Situations of vulnerability may change over time as circumstances change or evolve. The factors that create a vulnerable situation for migrants might be what drives their migration from their countries of origin, occurs in transit and/or is related to a particular aspect of a person's identity or circumstance. Thus, vulnerability in this context can be understood as situational (external) and/or embodied (internal).[11]

A vulnerable situation arising from the reasons for leaving countries of origin

13. The drivers for "non-voluntary" precarious movements are multiple and often intertwined, and should be assessed on an individual basis. They can include poverty, discrimination, lack of access to fundamental human rights, including education, health,

[9] Article 2 of the International Covenant on Civil and Political Rights makes clear that the duty bearer in general is the State in whose territory a person is located, obliging States to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

[10] States assume obligations and duties under international law to respect, protect and fulfil human rights. The obligation to respect means that States must refrain from interfering with or curtailing the enjoyment of human rights. The obligation to protect requires States to protect individuals and groups against human rights abuses. The obligation to fulfil means that States must take positive action to facilitate the enjoyment of human rights.

[11] It is important to note that migrants often show considerable resilience and agency throughout their migration. The vulnerable situations that migrants face have often been created for them by others through law, policy and practice. A human rights-based approach to migrants in a vulnerable situation would therefore seek to ensure that responses aim above all to empower migrants, rather than stigmatizing them and denigrating their agency. See, for example, A/HRC/33/67, paras. 9-12 and A/71/285, paras. 59-61.

food and water, and decent work, as well as xenophobia, violence, gender inequality, the wide-ranging consequences of natural disaster, climate change and environmental degradation, and separation from family. The New York Declaration for Refugees and Migrants emphasizes in addition that many people move, indeed, for a combination of these reasons.

A vulnerable situation occurring in the context of the circumstances encountered by migrants en route, at borders and at reception

14. People are often compelled to utilize dangerous means of transportation in hazardous conditions and to resort to the use of smugglers and other types of facilitators, which can place them in situations of exploitation, at risk of trafficking in persons and other abuse. Such a journey can be marked by hunger, deprivation of water, a lack of personal security and lack of access to medical care. Many migrants can spend long periods of time in transit countries, often in irregular and precarious conditions, unable to access justice and at risk of a range of human rights violations and abuses. The inadequate and often harsh conditions in which they are received at borders can also violate rights and further exacerbate vulnerabilities. Responses, such as the arbitrary closure of borders, denial of access to asylum procedures, arbitrary push-backs, violence at borders committed by State authorities and other actors (including criminals and civilian militias), inhumane reception conditions, a lack of firewalls, and denial of humanitarian assistance, increase the risks to the health and safety of migrants, in violation of their human rights.

A vulnerable situation related to a specific aspect of a person's identity or circumstance

15. As they move, some people are more at risk of human rights violations than others owing to their persisting unequal treatment and discrimination based on factors including age, gender, ethnicity, nationality, religion, language, sexual orientation or gender identity, or migration status, singly or in combination. Certain people, such as pregnant women, persons in poor health, including those with HIV, persons with disabilities, older persons, or children (including unaccompanied or separated children), are more at risk because of their physical and/or psychological condition.

B. Principles and practical guidance

16. There is an international legal framework that specifically protects the rights of all migrants. However, more precise understanding of the human rights standards for migrants in vulnerable situations, as well as of how States (and other stakeholders) can operationalize those standards in practice, is lacking. The principles and guidelines are accordingly an attempt to provide guidance to States and other stakeholders on how to implement obligations and duties to respect, protect and fulfil the rights of migrants who are moving in vulnerable situations, including within large and/or mixed movements.

17. The principles are drawn directly from international human rights law and related standards, including international labour law, refugee law, criminal law, humanitarian law, the law of the sea, customary international law and general principles of law, including in relation to specific groups in such movements, such as children, persons with disabilities, women at risk, older persons, and lesbian, gay, bisexual, transgender and intersex individuals. The guidelines elaborate international best practice related to each principle in order to assist States (and other stakeholders) to develop, strengthen, implement and monitor measures to protect migrants in vulnerable situations. The guidelines are derived from international human rights law and other relevant branches of law, authoritative interpretations or recommendations by the international human rights treaty bodies and the

special procedure mandate holders of the Human Rights Council, as well as other expert sources where relevant.[12] It should be noted that the principles and their associated guidelines are interrelated and inform each other; as such the principles and guidelines should be read holistically.

III. The Principles[13]

18. The proposed text of the draft principles is as follows:

Principle 1. Ensure that human rights are at the centre of addressing migration, including responses to large and/or mixed movements of migrants.[14]

Principle 2. Counter discrimination against migrants in all its forms.[15]

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[12] The guidance of the international human rights treaty bodies and the special procedure mandate holders of the Human Rights Council is legally binding to the extent that their work is based on binding international human rights law and enjoys the collaboration of States in the system; and also by the authority given on the one hand to the treaty bodies by their creation in accordance with the provisions of the treaty that they monitor, and on the other the authority provided to the special procedure mandate holders by the Human Rights Council. The recommendations of the treaty bodies and special procedure mandate holders are also considered authoritative by prominent international and regional judicial institutions.

[13] The sources of international and regional law listed in the footnotes to each principle are further supplemented by various general comments of the human rights treaty bodies, United Nations resolutions and international and regional case law, which are not listed here for reasons of space.

[14] See Universal Declaration of Human Rights, arts. 1 and 2; Charter of the United Nations, Arts. 1 (3) and 55 (c); International Covenant on Civil and Political Rights, art. 2 (1); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 7; Convention on the Rights of Persons with Disabilities, art. 4; Protocol against the Smuggling of Migrants by Land, Sea And Air, supplementing the United Nations Convention against Transnational Organized Crime, arts. 2, 4, 14 and 16; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 2 (b). Regional norms, including the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 1; the American Convention on Human Rights, art. 1; the African Charter on Human and Peoples' Rights, art. 2; and the Arab Charter on Human Rights, art. 3.

[15] See Universal Declaration of Human Rights, arts. 2 and 7. The core human rights treaties enshrine a provision on the principle of non-discrimination, which guarantees that every right that the covenant or convention provides for shall apply to every person without any discrimination of any kind based, for example, on race, colour, sex, language, religion, political opinion, national and social origin, birth and other status. See International Covenant on Civil and Political Rights, art. 2; International Covenant on Economic, Social and Cultural Rights, art. 2 (2); International Convention on the Elimination of All Forms of Racial Discrimination, art. 2; Convention on the Elimination of All Forms of Discrimination against Women, arts. 1 and 2; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1; Convention on the Rights of the Child, art. 2; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 1 (1); Convention on the Rights of Persons with Disabilities, arts. 3 (b) and 5; International Convention for the Protection of All Persons from Enforced Disappearance, art. 2. See also International Convention on the Elimination of All Forms of Racial Discrimination, arts. 4, 5 and 7; International Covenant on Civil and Political Rights, arts. 20 (2) and 26; and International Covenant on Economic, Social and Cultural Rights, art. 2 (2). Regional norms, including the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 14 and its Protocol No. 12, preamble; American Convention on Human Rights, art. 1; African Charter on Human and Peoples' Rights art. 25; Arab Charter on Human Rights, art. 2.

Principle 3. Protect the lives and safety of migrants and ensure rescue and immediate assistance to all migrants facing risks to life or safety.[16]

Principle 4. Ensure access to justice for migrants.[17]

Principle 5. Ensure that all border governance measures protect human rights, including the right to freedom of movement and the right of all persons to leave any country, including their own, recognizing that States have legitimate interests in exercising immigration controls.[18]

Principle 6. Ensure that all returns are only carried out in full respect for the human rights of migrants and in accordance with international law, including upholding the principle of non-refoulement, the prohibition of arbitrary or collective expulsions and the right to seek asylum.[19]

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[16] See Universal Declaration of Human Rights, art. 3; International Covenant on Civil and Political Rights, art. 6, noting that article 4 provides that no derogation is admitted for this principle even in times of public emergency; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 9; Convention on the Rights of Persons with Disabilities, art. 11; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, arts. 2 and 6 (3); Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, arts. 9 (1) (a) and 16 (3); Convention on the Law of the Sea, art. 98. Regional norms, including the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2; American Convention on Human Rights, art. 4; African Charter on Human and Peoples' Rights, art. 4; Arab Charter on Human Rights, art. 5.

[17] See Universal Declaration of Human Rights, arts. 7 and 10; International Covenant on Civil and Political Rights, arts. 2 (3) (a) and (c) and 14; International Convention on the Elimination of All Forms of Racial Discrimination, arts. 5 (a) and 6; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 18; International Convention for the Protection of All Persons from Enforced Disappearance, art. 12; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 6 (2), (3) and (6); Convention relating to the Status of Refugees, art. 16 (1); Convention relating to the Status of Stateless Persons, art. 39 (1.2). Regional norms, including the Convention for the Protection of Human Rights and Fundamental Freedoms, arts. 6 and 13; Council of Europe Convention on Action against Trafficking in Human Beings, art. 15 (2); American Convention on Human Rights, arts. 8 and 25; African Charter on Human and Peoples' Rights, art. 7; Arab Charter on Human Rights, art. 9.

[18] See Universal Declaration of Human Rights, art. 13; International Covenant on Civil and Political Rights, art. 12 (1) and (2); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 8 (1) and 79; Convention on the Rights of Persons with Disabilities, art. 18; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 11 (1); Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, art. 11 (1); Convention relating to the Status of Refugees, art. 26; Convention relating to the Status of Stateless Persons, art. 26. Regional norms, including Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto, art. 2; American Convention on Human Rights, art. 22; African Charter on Human and Peoples' Rights, art. 12 (1), (2) and (3); Arab Charter on Human Rights, art. 4.

[19] See Universal Declaration of Human Rights, art. 14; International Covenant on Civil and Political Rights, art. 13; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3 (1) and (2); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 22 (1) and (2); International Convention for the

Principle 7. Protect migrants from all forms of violence and exploitation, whether inflicted by institutions or officials, or by private individuals, entities or groups.[20]

Principle 8. Uphold the right of migrants to liberty and prohibition of arbitrary detention through making targeted efforts to end immigration detention of migrants. Never detain children on account of their migration status or that of their parents.[21]

Principle 9. Ensure the widest protection of the family unity of migrants, facilitating family reunification and preventing arbitrary or unlawful interference in the right of migrants to the enjoyment of private and family life.[22]

Protection of All Persons from Enforced Disappearance, art. 16; Protocol against the Smuggling of Migrants by Land, Sea And Air, supplementing the United Nations Convention against Transnational Organized Crime, art. 18 (5); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 8 (1) and (2); Convention relating to the Status of Refugees, arts. 32 and 33; Convention relating to the Status of Stateless Persons, art. 31 (1). Regional norms, including Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms, securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto, art. 4; Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 1; African Charter on Human and Peoples' Rights, art. 12 (4) and (5); Arab Charter on Human Rights, arts. 4 and 23.

[20] See Universal Declaration of Human Rights, arts. 4 and 5; International Covenant on Civil and Political Rights, arts. 7 and 9.1; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 2 (1); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (b); Convention on the Elimination of All Forms of Discrimination against Women, art. 6; Convention on the Rights of the Child, art. 19 (1) and see also arts. 34, 35, 36 and 37 and the Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 10, 11 (1), (2) and (3) and 16 (2); Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, arts. 6 (3) and 16 (2); Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, arts. 3 (a) and 9 (5); Protocol of 2014 to the Forced Labour Convention (1930), art. 1 (1). Regional norms including the Convention for the Protection of Human Rights and Fundamental Freedoms, arts. 3 and 4; American Convention on Human Rights, arts. 5 (1) and (2) and 6 (1) and (2); African Charter on Human and Peoples' Rights, art. 5; Arab Charter on Human Rights, arts. 4 and 13.

[21] See Universal Declaration of Human Rights, arts. 3 and 9; International Covenant on Civil and Political Rights, art. 9 (1); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 16 (1) and (4); International Convention for the Protection of All Persons from Enforced Disappearance, arts. 1, 2.1, 17 and 23; Convention relating to the Status of Refugees, art. 31; Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, art. 5. Regional norms, including the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 5; Council of Europe Convention on Action against Trafficking in Human Beings, art. 26; American Convention on Human Rights, art. 7 (1) and (2); African Charter on Human and Peoples' Rights, art. 6; Arab Charter on Human Rights, arts. 5 and 8.

[22] See Universal Declaration of Human Rights, arts. 12 and 16; International Covenant on Civil and Political Rights, art. 23 (1); International Covenant on Economic, Social and Cultural Rights, art. 10 (1); Convention on the Rights of the Child, arts. 2, 10, 16 and 22. The family is placed at the centre of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, with the rights enshrined in the Convention guaranteed directly to migrant workers and to their families, see in particular article 44; ILO, Migrant Workers (Supplementary Provisions) Convention No. 143 (1975), art. 13.1. Regional norms, including the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 8; American Convention on Human Rights, art. 17;

Principle 10. Guarantee the human rights of all children in the context of migration and ensure that they are treated as children first and foremost.[23]

Principle 11. Protect the human rights of migrant women and girls.[24]

Principle 12. Ensure the enjoyment of the highest attainable standard of physical and mental health of all migrants.[25]

Principle 13. Safeguard the right of migrants to an adequate standard of living.[26]

Principle 14. Guarantee the right of migrants to work in just and favourable conditions.[27]

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 15 (1) and (2); African Charter on Human and Peoples' Rights, art. 18 (1) and (2); Arab Charter on Human Rights, arts. 17 and 38.

[23] See Universal Declaration of Human Rights, art. 26; Convention on the Rights of the Child; International Covenant on Civil and Political Rights, art. 24; International Covenant on Economic, Social and Cultural Rights, art. 10 (3); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 12 (4), 17 (6), 29, 30 and 45 (2) and (4); Convention on the Rights of Persons with Disabilities, art. 18 (2); International Convention for the Protection of All Persons from Enforced Disappearance, art. 25 (a); Protocol against the Smuggling of Migrants by Land, Sea And Air, supplementing the United Nations Convention against Transnational Organized Crime, art. 16 (4); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, arts. 3 (c) and (d), 6 (4) and 10 (2). Regional norms including the American Convention on Human Rights, art. 19; African Charter on Human and Peoples' Rights, art. 18 (3); Arab Charter on Human Rights, art. 38 (b).

[24] See Universal Declaration of Human Rights, art. 26; Convention on the Elimination of All Forms of Discrimination against Women; International Covenant on Civil and Political Rights, art. 3; International Covenant on Economic, Social and Cultural Rights, art. 10 (2); Protocol against the Smuggling of Migrants by Land, Sea And Air, supplementing the United Nations Convention against Transnational Organized Crime, art. 16 (4); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 10 (2). Regional norms, including the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention); African Charter on Human and Peoples' Rights, art. 18 (3), and its Protocol on the Rights of Women in Africa, including in particular art. 2; Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women, including in particular art. 9.

[25] See Universal Declaration of Human Rights, art. 25; International Covenant on Economic, Social and Cultural Rights, art. 12; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5; Convention on the Rights of the Child, art. 3 (3); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 28; Convention on the Elimination of All Forms of Discrimination against Women, art. 12 (1); Convention on the Rights of Persons with Disabilities, art. 25; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 6 (3). Regional norms including the African Charter on Human and Peoples' Rights, art. 16, and its Protocol on the Rights of Women in Africa, art. 14; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 10 (1).

[26] See Universal Declaration of Human Rights, arts. 21 (2), 22 (1), 24 and 25 (1); International Covenant on Economic, Social and Cultural Rights, arts. 9 and 11 (1); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 6 (4); Convention relating to the Status of Refugees, arts. 21, 23 and 24; Convention relating to the Status of Stateless Persons, arts. 21, 23 and 24. Regional norms, including the African Charter on Human and Peoples' Rights, art. 13 (2) and (3); and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 9.

Principle 15. Protect the right of migrants to education, including primary, secondary and higher education and vocational and language training.[28]

Principle 16. Uphold migrants' right to information.[29]

Principle 17. Guarantee monitoring and accountability in all responses to migration, including in large and/or mixed movements of migrants.[30]

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[27] See Universal Declaration of Human Rights, art. 23; International Covenant on Economic, Social and Cultural Rights, arts. 6 and 7; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (e) (i); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 25 (1); Convention relating to the Status of Refugees, in particular art. 17; Convention relating to the Status of Stateless Persons, chap. III. Regional norms, including the African Charter on Human and Peoples' Rights, art. 15; Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, arts. 6 and 7.

[28] See Universal Declaration of Human Rights, art. 26 (1); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5 (e) (v); International Covenant on Economic, Social and Cultural Rights, art. 13; Convention on the Rights of the Child, art. 28; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 30; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 6 (3) and (4); Convention relating to the Status of Refugees, art. 22; Convention relating to the Status of Stateless Persons, art. 22; Convention Against Discrimination in Education, art. 1. Regional norms including Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 2; African Charter on Human and Peoples' Rights, art. 17 (1); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, art. 13 (1) and (3).

[29] See Universal Declaration of Human Rights, art. 19; Vienna Convention on Consular Relations, art. 36 (1) (b); International Covenant on Civil and Political Rights, arts. 14 and 19 (1) and (2); International Convention on the Elimination of All Forms of Racial Discrimination, art. 5; International Convention for the Protection of All Persons from Enforced Disappearance, arts. 18 and 20; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 16 (5), 18 (3) (a) and 22 (3); Protocol against the Smuggling of Migrants by Land, Sea And Air, supplementing the United Nations Convention against Transnational Organized Crime, art. 16 (5); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 6 (2) and (3). Regional norms, including the American Convention on Human Rights, art. 7 (4); and the African Charter on Human and Peoples' Rights, art. 9 (1).

[30] See Universal Declaration of Human Rights, art. 8; International Covenant on Civil and Political Rights, arts. 2 (3) (a) and (c) and 40; International Covenant on Economic, Social and Cultural Rights, art. 16 (1), with resolution 1985/17 of the Economic and Social Council establishing the Committee on Economic, Social and Cultural Rights; International Convention on the Elimination of All Forms of Racial Discrimination, arts. 6, 8 and 9; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 14 (1), 17, 19 and 20; Convention on the Rights of the Child, arts. 39, 43 and 44; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, arts. 72, 73 and 83; Convention on the Rights of Persons with Disabilities, arts. 33, 34 and 35; International Convention for the Protection of All Persons from Enforced Disappearance, arts. 8 (2), 24 (4), 26 and 29; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 6 (6); Rome Statute of the International Criminal Court, Art. 75 (1). Regional norms including the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 13; American Convention on Human Rights, arts. 10, 41 and 62; African Charter on Human and Peoples' Rights, arts. 26 (1) and 45; Arab Charter on Human Rights, arts. 40 and 41.

Principle 18. Respect and support the activities of human rights defenders and others working to rescue and provide assistance to migrants.[31]

Principle 19. Improve the collection of disaggregated data on the human rights situation of migrants, while ensuring the right to privacy and protection of personal data.[32]

Principle 20. Build capacity and promote cooperation amongst and between all relevant stakeholders to ensure a gender-responsive and human rights-based approach to migration governance and to understand and address the drivers of the movement of migrants.[33]

[31] See Universal Declaration of Human Rights, arts. 19 and 20 (1); International Covenant on Civil and Political Rights, arts. 19, 21, 22 and 25; International Convention for the Protection of All Persons from Enforced Disappearance, art. 3. Regional norms, including the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 11; American Convention on Human Rights, arts. 13, 15 and 16; African Charter on Human and Peoples' Rights, arts. 10 and 11; and Arab Charter on Human Rights, art. 26.

[32] See Convention on the Rights of Persons with Disabilities, art. 31; Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 9. Regional norms including the African Charter on Human and Peoples' Rights, art. 45 (1) (a).

[33] See Universal Declaration of Human Rights, art. 22 (1); Charter of the United Nations, Articles 1 (3) and 56; International Covenant on Economic, Social and Cultural Rights, art. 2 (1); Convention relating to the Status of Refugees, art. 35; United Nations Convention Against Transnational Organized Crime, art. 1; Protocol against the Smuggling of Migrants by Land, Sea And Air, supplementing the United Nations Convention against Transnational Organized Crime, arts. 2, 7, 14 (2) (e) and 18 (6); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, art. 2.

Annex

Glossary

Asylum seeker	An asylum seeker is any person who has applied for protection as a refugee and is awaiting the determination of their status.
Border governance	Legislation, policies, plans, strategies, action plans and activities related to the entry into and exit of persons from the territory of the State, including detection, rescue, interception, screening, interviewing, identification, reception, detention, removal, expulsion, or return, as well as related activities such as training, technical, financial and other assistance, including that provided to other States.[a]
Firewalls	Measures to effectively separate immigration enforcement activities from public service provision by State and non-State actors and from labour law enforcement, as well as from criminal justice measures for victims of crime, so as not to deny human rights to persons in an irregular status.[b] They are "designed to ensure, particularly, that immigration enforcement authorities are not able to access information concerning the immigration status of individuals who seek assistance or services at, for example, medical facilities, schools and other social service institutions. Relatedly, firewalls ensure that such institutions do not have an obligation to inquire or share information about their clients' immigration status."[c]
Human rights defenders	A term used to describe people who, individually or with others, act to promote or protect human rights. There is no specific definition of who is or can be a human rights defender.[d] A person or group need not necessarily self-identify as a human rights defender to constitute one. In the present principles and guidelines, "human rights defender" should be read as specifically including those working with migrants, including providing humanitarian assistance.
Large movements	"Whether a movement is characterized as 'large' depends less on the absolute number of people moving than on its geographical context, the receiving States' capacities to respond and the impact caused by its sudden or prolonged nature on the receiving country."[e]

[a] See Recommended Principles and Guidelines on Human Rights at International Borders.

[b] See François Crépeau and Bethany Hastie, "The case for 'firewall' protections for irregular migrants: safeguarding fundamental rights", *European Journal of Migration and Law*, vol. 17, Nos. 2-3 (2015); European Commission against Racism and Intolerance, general policy recommendation No. 16 on safeguarding irregularly present migrants from discrimination; and ILO, *Promoting Fair Migration: General Survey Concerning the Migrant Workers Instruments* (2016), paras. 480-482. See also European Union Agency for Fundamental Rights, "Apprehension of migrants in an irregular situation — fundamental rights considerations" (2012).

[c] See Crépeau and Hastie, "The case for 'firewall' protections" p. 165.

[d] The fourth preambular paragraph of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms refers to "individuals, groups and associations ... contributing to the effective elimination of all violations of human rights and fundamental freedoms of peoples and individuals".

[e] See A/70/59, para. 11.

	"'Large movements' may be understood to reflect a number of considerations, including: the number of people arriving, the economic, social and geographical context, the capacity of a receiving State to respond and the impact of a movement which is sudden or prolonged. The term does not, for example, cover regular flows of migrants from one country to another. 'Large movements' may involve mixed flows of people, whether refugees or migrants, who move for different reasons but who may use similar routes."[f]
Migrants	In the present principles and guidelines, an international migrant (or migrant) refers to "any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence".[g] There is no universal, legal definition of a migrant. The term "migrant" within the present principles and guidelines refers throughout to a migrant in a vulnerable situation.[h]
Mixed migration	The term describes the cross-border movements of people with varying protection profiles, reasons for moving and needs, who are moving along the same routes, using the same transport or means of travel, often in large numbers.[i] There is no official or agreed definition of mixed migration.
Non-refoulement	The prohibition of refoulement under international human rights law generally applies to any form of removal or transfer of persons, regardless of their status, where there are substantial grounds for believing that the individual would be in danger of suffering torture or other irreparable harm in the place to which he or she is to be transferred or removed.[j] As an inherent part of the prohibition of torture and other forms of ill-treatment, the principle of non-refoulement is characterized by its absolute nature.[k]

[f] New York Declaration for Refugees and Migrants, para. 6.

[g] See Recommended Principles and Guidelines on Human Rights at International Borders, chap. I, para. 10. IOM defines a migrant as any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence, regardless of (a) the person's legal status; (b) whether the movement is voluntary or involuntary; (c) what the causes for the movement are; or (d) what the length of the stay is. Some categories of migrants are defined in international instruments, particularly "migrant worker" or "migrant for employment", which are defined in the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, art. 2 (1); ILO Migration for Employment Convention (Revised) No. 97 (1949), art. 11; ILO Migrant Workers (supplementary provisions) Convention, No. 143 (1975), art. 11. UNHCR always refers to refugees and migrants separately, to maintain clarity about the causes and character of refugee movements and not to lose sight of the specific obligations owed to refugees under international law.

[h] For an explanation of the term "migrant in a vulnerable situation", see paras. 12-15 of the report.

[i] See A/HRC/31/35, para. 10.

[j] See Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3; and Human Rights Committee, general comment No. 31 (2004) on the nature of the general legal obligation on States parties to the Covenant, para. 12.

[k] See A/70/303, paras. 38 and 41.

Refugee	A refugee is a person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such [persecution] … is unable or, owing to such fear, is unwilling to return to it."[l]
Separated children	Children who have been separated from both parents or from their previous legal or customary primary caregiver, but not necessarily from other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Children may become separated at any point of their migration.[m]
Statelessness	A stateless person is defined in article 1 (1) of the Convention relating to the Status of Stateless Persons as someone who is "not considered as a national by any State under the operation of its law".[n]
Unaccompanied children	Children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. Children may become unaccompanied at any point of their migration.[o]
Xenophobia	The term has commonly been used to describe attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the reality or perception that they are outsiders or foreigners to the community, society or national identity.[p] There is no universal, legal definition of xenophobia.

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[l] See Convention relating to the Status of Refugees, art. 1. A (2).

[m] See Committee on the Rights of the Child, general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, para. 8.

[n] The International Law Commission has considered the definition in article 1 (1) of the Convention to form part of customary international law (see A/61/10, Chap. II Natural Persons, Art. 8, Commentary (3), page 49). See also UNHCR, *Handbook on Protection of Stateless Persons Under the 1954 Convention relating to the Status of Stateless Persons* (Geneva, 2014).

[o] See Committee on the Rights of the Child, general comment No. 6, para. 7.

[p] See ILO, IOM and OHCHR, "International migration, racism, discrimination and xenophobia" (2001), p. 2.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Mental health and human rights

Report of the United Nations High Commissioner for Human Rights

Summary

The present report, mandated by the Human Rights Council in resolution 32/18, identifies some of the major challenges faced by users of mental health services, persons with mental health conditions and persons with psychosocial disabilities. These include stigma and discrimination, violations of economic, social and other rights and the denial of autonomy and legal capacity.

In the report, the High Commissioner recommends a number of policy shifts, which would support the full realization of the human rights of those populations, such as the systematic inclusion of human rights in policy and the recognition of the individual's autonomy, agency and dignity. Such changes cover measures to improve the quality of mental health service delivery, to put an end to involuntary treatment and institutionalization and to create a legal and policy environment that is conducive to the realization of the human rights of persons with mental health conditions and psychosocial disabilities.

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I. Introduction

1. On 1 July 2016, the Human Rights Council adopted resolution 32/18 on mental health and human rights. In the resolution, the Council requested the High Commissioner to prepare a report on the integration of a human rights perspective in mental health and the realization of the human rights and fundamental freedoms of persons with mental health conditions or psychosocial disabilities, including persons using mental health and community services, and to submit the report to the Human Rights Council at its thirty-fourth session. The Council specified that the report should identify existing challenges and emerging good practices, make recommendations in that regard and identify means of strengthening technical assistance and capacity-building, taking into account existing activities and experiences in this area.

2. The Office of the United Nations High Commissioner for Human Rights (OHCHR) invited submissions from a range of stakeholders, including Member States, special procedure mandate holders, United Nations human rights treaty bodies, the World Health Organization and civil society organizations. OHCHR received a total of 40 submissions, of which 18 were contributed by Member States.[1] Although the High Commissioner does not reference individual submissions, they were an important source of the research on which the report draws, particularly in relation to challenges and recommendations.

3. Given the extensive scope of the resolution, and the fundamentally broad nature of the human rights, mental health and disability agendas, the report is focused on providing an overview of some of the most significant challenges faced by the groups identified in the resolution, the normative framework applicable to their human rights and policies and practices, which would support their full realization. The report also makes recommendations in these areas, as well as in relation to capacity-building and technical support.

II. Terminology and background

4. The right to the highest attainable standard of physical and mental health is a fundamental human right indispensable for the exercise of other human rights.[2] Health describes a state of "complete physical, mental and social well-being and not merely the absence of disease or infirmity".[3] Mental health may, in its turn, be defined as "a state of well-being in which an individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and is able to make a contribution to his or her community".[4] In the case of children and adolescents, mental health refers to "the capacity to achieve and maintain optimal psychological functioning and well-being".[5]

5. Three different categories should be clearly distinguished among those referred to in resolution 32/18: persons using mental health services (who are current or potential users of

[1] Submissions were received from the following Member States: Australia, Bolivia (Plurinational State of), Brazil, Colombia, Egypt, Germany, Guatemala, Hungary, Ireland, Jamaica, Monaco, Netherlands, Oman, Portugal, Qatar, Republic of Moldova, Saudi Arabia and Serbia.

[2] See Committee on Economic Social and Cultural Rights, general comment No. 14 (2000) on the right to the highest attainable standard of health, para. 1.

[3] Constitution of the World Health Organization (WHO), preamble.

[4] See www.who.int/mediacentre/factsheets/fs220/en/.

[5] South Africa, Department of Health, *Policy Guidelines: Child and Adolescent Mental Health* (2001), p. 4.

mental health and community services); persons with mental health conditions; and persons with psychosocial disabilities, namely, persons who, regardless of self-identification or diagnosis of a mental health condition, face restrictions in the exercise of their rights and barriers to participation on the basis of an actual or perceived impairment. These categorizations may overlap: a user of mental health services may not have a mental health condition and some persons with mental health conditions may face no restrictions or barriers to their full participation in society. The groupings should not determine or undermine the protection of their rights recognized under human rights law, including the rights enshrined in the Convention on the Rights of Persons with Disabilities, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

III. The right to health framework

6. The right to health is recognized, either explicitly or implicitly, in several human rights instruments, including the International Covenant on Economic, Social and Cultural Rights (art. 12), the Convention on the Rights of the Child (art. 24), the Convention on the Rights of Persons with Disabilities (art. 25) and the Convention on the Elimination of All Forms of Discrimination against Women (arts. 10 (h), 11 (1) (f), 11 (2), 12 and 14 (2) (b)). It is an inclusive right encompassing both timely and appropriate health care and the underlying determinants of health.[6] In the case of mental health, determinants include low socioeconomic status, violence and abuse, adverse childhood experiences, early childhood development and whether there are supportive and tolerant relationships in the family, the workplace and other settings.

7. The right to health contains freedoms (such as the freedom to control one's health and body and the right to be free from interference, torture and non-consensual medical treatment) and entitlements (such as the right to a health system that provides equality of opportunity for people to enjoy the highest attainable level of health).[7] While, in recognition of resource constraints, the right to health is subject to progressive realization, the freedom element in the right to health is subject to neither progressive realization nor resource availability.[8]

8. States parties to the International Covenant on Economic, Social and Cultural Rights have a core obligation to fulfil the minimum essential levels of each right. The core obligations applicable to the right to health include ensuring the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups; ensuring access to adequate food and nutrition; ensuring access to basic shelter, housing and sanitation; providing access to essential drugs; ensuring an equitable distribution of all health facilities, goods and services; and adopting and implementing a national public health strategy and plan of action which address the health concerns of the whole population.[9] Among the obligations of comparable import are the obligations to ensure child health care, to provide education and access to health information and to provide appropriate training for health personnel, including education on health and human rights.[10] These core obligations apply as much to mental health as to physical health.

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[6] See Committee on Economic, Social and Cultural Rights, general comment No. 14, paras. 4 and 11.

[7] Ibid., para. 8.

[8] See E/CN.4/2005/51, para. 41.

[9] See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 43.

[10] Ibid., para. 44.

9. The human rights-based approach derived from these norms calls for States to ensure that health facilities, goods and services for mental health are available in sufficient quantity and are accessible and affordable on the basis of non-discrimination. They are also required, among other things, to be gender-sensitive, scientifically and medically appropriate, of good quality and respectful of medical ethics, such as respect for autonomy and agency without discrimination. An integral feature of the right to health, the meaningful participation of all stakeholders in decisions and policies on health, particularly those affected, should be ensured for persons with mental health conditions and others using mental health services through transparent processes.[11] This involves effective community action in setting priorities, making decisions, planning, implementing and evaluating strategies to achieve better health,[12] including mental health. Health authorities and other duty bearers should be accountable for meeting human rights obligations in public health, including through the possibility of seeking effective remedies via complaints mechanisms or other avenues for redress.

10. The formal legal framework has been complemented by the political commitments made in the 2030 Agenda for Sustainable Development, especially Goal 3, which aims to ensure healthy lives and promote well-being for all at all ages. Target 3.4 addresses the reduction of premature mortality from non-communicable diseases and the promotion of mental health and well-being. The prevention and treatment of substance abuse, including narcotic drug abuse and the harmful use of alcohol, fall under target 3.5, while other targets, such as those relating to universal health coverage and tobacco control, focus on areas of clear relevance, even where mental health is not specifically referenced.

IV. Challenges with implications for human rights in mental health

11. The current estimates are that mental health conditions will affect one in four people throughout their lifetime.[13] However, nearly two thirds of persons with mental health conditions will not seek treatment for their condition.[14] Persons with mental conditions also experience disproportionately higher rates of poor physical health for a variety of reasons.[15] One important reason is that poor mental health is a predisposing factor for physical health problems. Another is "diagnostic overshadowing", where symptoms of physical ill-health are erroneously attributed to mental health conditions and, consequently, either not adequately treated or ignored altogether.[16] Stigma is also a significant determinant of quality of care and access to the full range of services required by persons with mental health conditions who also have physical complaints.[17] Research shows that persons with mental health conditions have a much reduced life expectancy compared with the general population, with an estimated drop in life expectancy of 20 years for men and 15 years for

[11] See A/60/348, para. 57.

[12] See Committee on Economic, Social and Cultural Rights, para. 54.

[13] Jessica Mackenzie and Christie Kesner, "Mental health funding and the SDGs. What now and who pays?", Overseas Development Institute (2016), p. 9, and WHO mental health fact sheet (April 2016) available from www.who.int/mediacentre/factsheets/fs396/en/.

[14] WHO, Mental disorders affect one in four people www.who.int/whr/2001/media_centre/press_release/en/.

[15] WHO, "Mental health action plan 2013-2020", para. 11.

[16] Royal College of Psychiatrists, "Whole-person care: from rhetoric to reality. Achieving parity between mental and physical health", occasional paper OP88, (2013), p. 28.

[17] See David Lawrence and Rebecca Coghlan, "Health inequalities and the health needs of people with mental illness", *New South Wales Public Health Bulletin*, vol. 13, No. 7 (July 2002).

women.[18] In some countries, the absence of community-based mental health care means the only care available is in psychiatric institutions, which are associated with gross human rights violations, including inhuman and degrading treatment and living conditions.[19]

A. The experience of living with mental health conditions

1. Barriers to the enjoyment of economic and social rights and the underlying determinants of mental health

12. While statistics are important to understanding the breadth of the challenges presented by mental health conditions, it is the individual who should remain the central figure in the discourse around these questions. The experience of living with mental health conditions is shaped, to a great extent, by the historical and continuing marginalization of mental health in public policy. This manifests itself in, among other areas, social life, inequality of access to opportunities and the overrepresentation of persons with mental health conditions in populations living in poverty.[20] Indeed, today, one of the most important health and human rights challenges is to enhance enjoyment of the right to health for those living in poverty.[21]

13. Mental health is not merely a health issue. There is a strong link between mental health and poverty, as well as between mental health conditions and the economic hardship resulting from the inadequate realization of economic, social and cultural rights, such as the rights to education, work, housing, food and water.[22] These and other rights are also underlying determinants of mental health and, consequently, the extent to which they are realized affects the enjoyment of the right to mental health. The failure to adopt policy approaches which take account of these and other determinants of mental health is, similarly, a major barrier to the realization of the right to mental health.

14. According to the Special Rapporteur on the right to health, the "tendency to undermine the importance of economic, social and cultural rights has led, and continues to lead, to a detrimental combination of poverty, inequalities and disempowerment of large groups of population, who will consequently suffer from poor health status and barriers to accessing health-care services.[23] The interruption of and restricted access to education experienced by many persons with mental health conditions, for instance, limits the opportunities available for obtaining qualifications which would facilitate gainful employment. Difficulty in securing employment and remaining in work or otherwise generating income has negative consequences for the ability to access and retain adequate housing. Taken together, these challenges perpetuate social inequality and have a ruinous and enduring impact on the enjoyment of the right to an adequate standard of living and, consequently, on mental health and access to health services.

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[18] Kristian Wahlbeck and others, "Outcomes of Nordic mental health systems: life expectancy of patients with mental disorders", *British Journal of Psychiatry*, vol. 199, No. 6 (December 2011). See also Stephen C. Newman and Roger C. Bland, "Mortality in a cohort of patients with schizophrenia: a record linkage study", *Canadian Journal of Psychiatry*, vol. 36, No. 4 (June 1991).

[19] See A/HRC/22/53, paras. 59, 63-70.

[20] See Florida Council for Community Mental Health, "Mental illness and poverty: a fact sheet" (January 2007), available from www.fccmh.org/resources/docs/MentalIllnessandPovery.pdf. See also Sally McManus and others "Adult psychiatric morbidity in England, 2007. Results of a household survey", NHS Information Centre for Health and Social Care (2009).

[21] See A/HRC/4/28, para. 20.

[22] A/HRC/29/33 para. 28.

[23] Ibid., para. 53.

2. Stigma and discrimination

15. There are many negative beliefs around mental health conditions, such as that they are evidence of personal weakness or that they have their origins in witchcraft or spiritual or supernatural phenomena.[24] Together with deeply engrained, adverse stereotypes around persons living with or perceived as having mental health conditions, including the belief that they are incapable of exercising agency over decisions that affect them or of contributing positively to society, these misconceptions have been largely responsible for creating and perpetuating stigma and discrimination.

16. This stereotyping, prejudice and stigmatization is present in every sphere of life, including social, educational, work and health-care settings, and profoundly affects the regard in which the individual is held, as well as their own self-esteem. The lack of systematic training and awareness-raising for mental health personnel on human rights as they apply to mental health allows stigma to continue in health settings, which compromises care. In relation to access to health care, medical insurance schemes often incorporate terms that indirectly discriminate against persons with mental health conditions. Pre-existing conditions or assessments, for instance, may disqualify them from obtaining full health coverage, based on a diagnosis of a mental health condition.

3. Lack of free and informed consent

17. As noted by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, informed consent is not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making and assigning associated duties and obligations to health-care providers.[25] In order for consent to be valid, it should be given voluntarily and on the basis of complete information on the nature, consequences, benefits and risks of the treatment, on any harm associated with it and on the availability of alternatives.[26] Involuntary treatment refers to the administration of medical or therapeutic procedures without the consent of the individual. Treatment administered, for example, on the basis of misrepresentation would constitute involuntary treatment, as would treatment given under threat, without full information or on dubious medical grounds.[27] Guaranteeing informed consent is a fundamental feature of respecting an individual's autonomy, self-determination and human dignity.[28]

B. Systemic challenges applicable to mental health

18. The right to health entitles rights holders to a health system that supports the attainment of the highest level of health. The concerns identified below have particular relevance in the context of this standard and for the availability, acceptability, accessibility and quality of mental health services.

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[24] WHO and World Organization of Family Doctors, *Integrating Mental Health into Primary Care: a Global Perspective*, p. 168.

[25] See A/64/272, para. 9.

[26] Ibid., para. 15.

[27] European Agency for Fundamental Rights, "Involuntary placement and involuntary treatment of persons with mental health problems" (2012), pp. 44-47.

[28] See A/64/272, para. 18.

1. Maximum available resources

19. Despite the impact of mental health conditions on individuals, families and communities, there is insufficient investment of both financial and human resources in the area of mental health. Global annual spending on mental health is less than $2 per person and less than $0.25 per person in low-income countries.[29] This affects the provision of services, as inadequate numbers of staff, often with insufficient training, especially in the area of human rights, are required to deliver services which are in accordance with human rights standards. In addition, the largest proportion of most mental health budgets is typically allocated to psychiatric hospitals.[30] This continued investment by Governments in institutional settings, such as psychiatric hospitals, is often accompanied by a corresponding failure to invest in community-based mental health services and supports, which have been widely established as good practices, as more fully explained below. The inadequate allocation of resources and poor decisions taken as to their use, undermine the availability, acceptability, accessibility and quality of mental health services. They also fall foul of article 2 (1) of the International Covenant on Economic, Social and Cultural Rights, which requires States parties to employ their maximum available resources for the progressive realization of the rights recognized in the Covenant, including the right to health.

2. Provision of services in a segregated manner

20. Although there has been progress over the last few decades, the segregation and centralization of mental health services around psychiatric hospitals and institutions continues to pose a challenge in certain important respects. The failure to integrate interdisciplinary mental health services into primary care renders a "whole person" approach extremely difficult. In many countries, there are no mental health services available in local health clinics and general hospitals, forcing people in remote areas to travel long distances, often at high cost. Where mental health care and support services are provided in segregated systems and social care institutions, there is a higher risk of human rights violations.[31]

3. Valuing mental health

21. In the context of health, the concept of parity of esteem refers to valuing mental health equally with physical health.[32] From a normative standpoint, the framework which establishes the right to health does not create a hierarchy where mental health is ranked lower than physical health. The strong relationship between physical and mental health calls for an approach which accords equal value to both and yet a lack of parity of esteem, where preferential consideration is given to physical health, remains the dominant perspective. Consequently, among other discrepancies, fewer financial and human resources are allocated for mental health and many mental health facilities tend to be dilapidated, with lower hygiene standards and fewer amenities. There are also significant data and research gaps in mental health, particularly in relation to the identification of the human rights situation of persons with mental health conditions and users of mental health services, and the impact of policy measures.

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[29] See WHO, "Mental health action plan 2013-2020", para. 14.

[30] WHO, Mental Health Atlas 2014, p. 9.

[31] See E/CN.4/2005/51, para. 8.

[32] Royal College of Psychiatrists, "Whole-person care: from rhetoric to reality", p. 20.

V. The human rights-based approach to disability in the context of mental health

22. The Convention on the Rights of Persons with Disabilities adopts a human rights-based approach to disability and supersedes previous international "soft law" developments, including the Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. It reflects the most advanced international human rights standards on the rights of persons with psychosocial disabilities.

23. The human rights-based approach to disability, in addition to other principles, requires the unconditional application of the principle of non-discrimination with regard to persons with disabilities. No additional qualifiers associated with an impairment may justify the restriction of human rights. For example, persons with psychosocial disabilities should not be arbitrarily deprived of their liberty on the basis of their impairment including in conjunction with an alleged danger to themselves or to others.[33] Mental health policy should adopt and integrate this approach and guard against lowering standards.

24. Widespread practices circumvent the substantive equality approach for persons with psychosocial disabilities in public and private settings, including through the failure to provide reasonable accommodation, that is, the necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.[34] Disability determination or certification schemes, where they exist, may not recognize them as persons with disabilities, which can lead to their exclusion from disability-specific social protection schemes.

A. Equal recognition before the law

25. Article 12 of the Convention on the Rights of Persons with Disabilities affirms the right of persons with psychosocial disabilities to equal recognition before the law, upholding their right to exercise legal capacity on an equal basis with others. In the area of mental health, legal capacity has an important application in the exercise of free and informed consent. Many national laws continue to allow for the denial of legal capacity of persons with psychosocial disabilities, precluding them from making their own decisions. These substituted decision-making regimes commonly permit third parties to provide consent for treatment or admission for treatment on behalf of the person concerned.

26. States should repeal legal frameworks allowing substitute decision makers to provide consent on behalf of persons with disabilities and introduce supported decision-making, ensuring its availability for those who request it. Health service providers should seek the free and informed consent of the person concerned by all possible means.[35]

27. Compliance with the standards on accessibility of information and communications in the Convention on the Rights of Persons with Disabilities is a key precondition for the exercise of legal capacity and free and informed consent. For example, information on treatments and side-effects is often not available in Braille, sign language, or other alternative modes of communication. While health services may progressively advance in

[33] See CRPD/C/DNK/CO/1, para. 36 and CRPD/C/SWE/CO/1, para. 35.

[34] Convention on the Rights of Persons with Disabilities, art. 2.

[35] See Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014) on equal recognition before the law, para. 41.

complying with accessibility requirements, they do have an immediate obligation to provide reasonable accommodation.[36]

28. In certain situations, the will of the person concerned might be difficult to determine. Instruments such as advance directives or powers of attorney should be promoted and clearly formulated to prevent misunderstanding or arbitrariness by those executing them. Even when such instruments are in force, persons with psychosocial disabilities must always retain their right to modify their will and service providers should continue to seek their informed consent. The Committee on the Rights of Persons with Disabilities has held that, in all cases, it should be understood that article 12 of the Convention on the Rights of Persons with Disabilities prohibits resorting to the principle of the "best interests" of the individual in relation to adults with disabilities.[37] Significant efforts must be made to determine the individual's will and preferences, ensuring that all possible accommodations, supports and diverse methods of communication are made available and accessible. Where all means have been exhausted and the individual's will remains undetermined, the principle of "the best interpretation of will and preferences of the individual" must be upheld and carried out in good faith.[38]

B. The absolute ban on deprivation of liberty on the basis of impairments

29. Article 14 of the Convention on the Rights of Persons with Disabilities establishes an absolute ban on deprivation of liberty on the basis of impairments, which precludes non-consensual commitment and treatment.[39] This provision reflects the non-discriminatory approach guaranteed by the Convention in connection with the right to liberty and security of person. The Committee on the Rights of Persons with Disabilities has clearly and consistently confirmed the non-discriminatory approach to the right to liberty, which establishes the unambiguous prohibition on deprivation of liberty on the basis of impairments, whether or not it is connected with other factors.

30. Persons with psychosocial disabilities continue to be subjected to forced institutionalization, as allowed by civil codes and mental health laws in many countries. Deprived of their liberty, they are commonly subjected to forced treatment, and living conditions and arrangements may also put their physical and mental integrity at risk. Children or adults detained in institutions are at increased risk of violence and abuse, including sexual exploitation and trafficking.[40] The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has found that children in residential or institutional care are at greater risk of mental health trauma, violence and abuse, and that the severe emotional pain and suffering caused by segregation may rise to the level of ill-treatment or torture.[41] Outside of institutions, the use of community treatment orders or mandatory outpatient treatment, even if enforced in the community, violates the right to

[36] See A/HRC/34/26, para. 33.

[37] See Committee on the Rights of Persons with Disabilities, general comment No. 1, para. 21.

[38] Ibid., para. 21.

[39] See Committee on the Rights of Persons with Disabilities, guidelines on article 14 of the Convention, paras. 6 and 10.

[40] See, for example, Disability Rights International and the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, "Abandoned and disappeared: Mexico's segregation and abuse of children and adults with disabilities" (2010). See also Disability Rights International, "No justice: torture, trafficking and segregation in Mexico" (2015); "Left behind: the exclusion of children and adults with disabilities from reform and rights protection in the Republic of Georgia" (2013); and "International collaboration for inclusion: a study funded by the United States Department of State" (2014). Available at www.driadvocacy.org.

[41] A/HRC/28/68.

liberty and security of the person as such measures impose treatment and the threat of detention if refused.

31. Forced institutionalization violates the right to personal liberty and security, understood as freedom from confinement of the body and freedom from injury to one's bodily or mental integrity, respectively. [42] It amounts to a violation of the right to live free from torture and ill-treatment,[43] and from exploitation, violence and abuse, and of the right to personal integrity. States parties should repeal legislation and policies that allow or perpetuate involuntary commitment, including its imposition as a threat, and should provide effective remedies and redress for victims.[44]

32. Criminal law and procedures commonly deny due process of law to persons with disabilities considered unfit to stand trial and/or incapable of criminal responsibility, leading to deprivation of liberty on the basis of impairment, including through the diversion of persons with psychosocial disabilities into the custody of forensic institutions. The Committee on the Rights of Persons with Disabilities has consistently considered that this denies fair trial rights, amounts to arbitrary detention and often leads to harsher consequences than criminal sanctions, such as indefinite detention in mental health facilities.

C. Forced treatment: forced medication, overmedication and harmful practices during deprivation of liberty

33. Many practices within mental health institutions also contravene articles 15, 16 and 17 of the Convention on the Rights of Persons with Disabilities. Forced treatment and other harmful practices, such as solitary confinement, forced sterilization, the use of restraints, forced medication and overmedication (including medication administered under false pretences and without disclosure of risks) not only violate the right to free and informed consent, but constitute ill-treatment and may amount to torture. [45] Accordingly, the Committee on the Rights of Persons with Disabilities has called for the abolition of all involuntary treatment and the adoption of measures to ensure that health services, including all mental health services, are based on the free and informed consent of the person concerned.[46] The Committee has also urged the elimination of the use of seclusion and restraints, both physical and pharmacological.[47]

VI. Charting the way forward

34. Mental health is not merely a health or medical concern, it is very much a matter of human rights, dignity and social justice. The overview of the challenges facing persons with mental health conditions and those with psychosocial disabilities indicates that fundamental

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[42] See Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 3.

[43] See A/63/175, paras. 47 and 65.

[44] See, for example, CRPD/C/CZE/CO/1, para. 33; CRPD/C/DEU/CO/1, para. 34 (c); CRPD/C/KOR/CO/1, para. 32 and A/HRC/30/37, para. 107 (f).

[45] See Committee on Economic, Social and Cultural Rights, general comment No. 14, para. 50, Committee on the Rights of Persons with Disabilities, general comment No. 1, paras. 37 and 41 and A/HRC/22/53, para. 63.

[46] See, for example, CRPD/C/ESP/CO/1, para. 36; CRPD/C/HUN/CO/1, para. 28 and CRPD/C/AUT/CO/1, para. 31.

[47] See, for example, CRPD/C/AUT/CO/1, para. 33; CRPD/C/MEX/CO/1, para. 32; and CRPD/C/DNK/CO/1, para. 39.

changes are necessary in current approaches to the protection of their rights and how that protection is implemented in policy. Key to this is recognizing that the individuals concerned, including children, have agency, self-determination and rights, which should be protected and respected.

35. The following sections of the report include recommendations for action to implement the changes necessary to address the challenges identified. They are organized, structurally, around the integration of a human rights-based approach, good practices and technical support and capacity-building, although their cross-cutting objective is, ultimately, the protection of the rights of the groups identified in Council resolution 32/18.

A. Human rights-based approach

1. Data collection

36. The collection of comprehensive qualitative and quantitative data is a vital component of a human rights-based approach. In the context of mental health, data collection should focus, inter alia, on resource allocation, disparities in access to health care and support, the identification of the most vulnerable and marginalized, patterns of discrimination, access to employment, housing and education, and the general socioeconomic situation of persons using mental health services. Data should be disaggregated by age, sex, socioeconomic status, disability and other factors, as relevant to the national context, and should be utilized to inform policy formulation and legislation and develop effective responses.

2. Creating an enabling legal and policy environment for the enjoyment of rights

37. Few countries have a legal framework that adequately protects the rights of users of mental health services, persons with mental health conditions or those with psychosocial disabilities. Given the direct impact of laws and policies on the realization of human rights, a legal and policy environment which upholds them is vital and furthermore is mandated by the obligation of States to respect, protect and fulfil rights.

38. A thorough review of laws and policies, with a view to establishing the extent to which persons with mental health conditions, users of mental health services and persons with psychosocial disabilities enjoy their human rights, both within the mental health system and in the broader social context, is an essential first step to ensuring an enabling environment. The policy and law review should be evaluated against the human rights standards outlined in the present report and should specifically integrate a focus on the underlying determinants of mental health. Action mandated by the relevant findings should form part of a national strategy and plan on mental health, the implementation of which is backed by adequate resources.

39. Following this human rights-based assessment, States should update or repeal, as appropriate, all existing laws, including legislation on employment, equality and non-discrimination, social protection, housing and education, to ensure that persons with mental health conditions are not discriminated against and have the same opportunities on an equal basis with others.

40. A human rights-based approach to mental health requires attention to its underlying determinants which, as noted earlier, include violence and abuse, adverse childhood experiences, early childhood development and whether there are supportive and tolerant relationships in the family, the workplace and other settings. Addressing these and other determinants involves coordinated action across the health and other relevant sectors with a view to ensuring policy coherence and the full protection of the rights of persons with mental health conditions, as outlined in the present section.

41. Other interventions include the promulgation of laws and policies to:

(a) Address and eliminate stigma and discrimination;

(b) Protect the principle of free and informed consent for treatment and prohibit involuntary treatment and detention;

(c) Protect individuals from human rights violations in health settings;

(d) Prohibit recourse to all forms of substitute decision-making;

(e) Ensure the availability of and equitable access to services and support for persons with mental health conditions and those with psychosocial disabilities, including those in prisons and other detention facilities;

(f) Ensure expeditious access to justice where human rights violations have occurred.

42. Regarding mental health and disability specifically, mental health laws, where they exist, should avoid the separate regulation of legal capacity, the right to liberty and security, or other aspects of the law which are amenable to being mainstreamed into general legislation. In all cases, laws and regulations should be compliant with articles 5, 12, 13, 14, 15, 16, 17 and 25 of the Convention on the Rights of Persons with Disabilities, among other provisions, and should: (a) prohibit the arbitrary deprivation of liberty on the basis of impairment, irrespective of any purported justification based on the need to provide "care" or on account of "posing a danger to him or herself or to others"; (b) ensure the individual's right to free and informed consent in all cases for all treatment and decisions related to health care, including the availability and accessibility of diverse modes and means of communication, information and support to exercise this right; and (c) in accordance with the standards of the Convention, develop, adopt and integrate into the legal framework the practice of supported decision-making, advance directives and the principle of "the best interpretation of the will and preferences" of the person concerned as a last resort.

3. Participation

43. The full participation of affected communities in the development, implementation and monitoring of policy has a positive impact on health outcomes and on the realization of their human rights. Ensuring their participation supports the development of responses that are relevant to the context and ensures that policies are effective.[48] Participation in law-making and policy design in mental health has typically been directed at health professionals, as a result of which the concerns and views of users, persons with mental health conditions and persons with psychosocial disabilities have not been systematically taken into account and harmful practices have been perpetuated and institutionalized in law and policies.

44. States should, therefore, ensure that users of mental health services, persons with mental health conditions and persons with psychosocial disabilities participate meaningfully during all stages of planning and implementation, as envisaged in article 4 (3) of the Convention on the Rights of Persons with Disabilities and recommended by the Committee on Economic, Social and Cultural Rights in its general comment No. 14 (para. 54). With this objective, States should build the capacity of users, persons with mental health conditions and those with psychosocial disabilities to participate and to claim their rights. An effective strategy will include education and awareness-raising, and ensuring that

[48] See Joint United Nations Programme on HIV/AIDS, "Non-discrimination in HIV responses" (June 2010), paras. 18-22.

transparent and accessible mechanisms for participation are established or strengthened at community, subnational and national levels.[49]

4. Resources

45. As noted above, the current expenditure on mental health falls far short of need and fails to meet the requirement in the International Covenant on Economic, Social and Cultural Rights to use the maximum available resources. In order to address this, priority should be given to the development and adequate resourcing of human rights-based strategies and plans on mental health, informed by the law and policy review recommended above. Resources should, among other things, be directed towards: (a) raising the quality of health care as well as ensuring availability, accessibility and acceptability; (b) improving working conditions for mental health personnel; (c) strengthening health workforce training, including in human rights; (d) ensuring the provision of the full range of support services; (e) achieving equality between mental and physical health services across all domains, including resource allocation, research and data; (f) emergency mental health services; (g) community-based mental health services; (h) mental health promotion;[50] and (i) ensuring access to education, adequate housing, support for securing and retaining employment, and social protection

46. An overarching principle which should inform policy in this area is the duty of States to invest resources in practices that uphold human rights and to adopt "do no harm" evaluation criteria to avoid further human rights violations. Indeed, resource allocation towards existing practices in mental health, which are contrary to international human rights standards, may amplify the impact of harmful practices.

5. Accountability

47. Monitoring, review, remedial measures and corrective action, guided by human rights-based, context-specific indicators, are cornerstones of any accountability framework.[51] Accountability should have as both a goal and a result the empowerment of users, persons with mental health conditions and those with psychosocial disabilities, including through legal and policy measures to ensure their participation in priority-setting and policy formulation, implementation and review, and to ensure access to remedial measures where appropriate.[52]

48. Ensuring access to justice in accordance with article 13 of the Convention on the Rights of Persons with Disabilities is essential to guaranteeing the redress of and reparations for human rights violations, including arbitrary detention on the basis of impairment. Effective remedies, available on an expedited basis, should be in place to challenge the deprivation of liberty and uphold the principle of informed consent to medical treatment. Practices that effectively deny fair trial rights (such as the denial of legal capacity by requiring a guardian to act on a person's behalf), or that may prevent access to legal remedies (such as mandatory legal representation), should be discontinued and prohibited by law.

49. Article 16 of the Convention on the Rights of Persons with Disabilities calls for the establishment of independent monitoring mechanisms for all services and facilities serving

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[49] Jyoti Sanghera and others, "Human rights in the new Global Strategy", *BMJ* (September 2015).

[50] Mackenzie and Kesner, "Mental health funding and the SDGs", p. 12.

[51] Independent Accountability Panel, "2016: Old challenges, new hopes. Accountability for the Global Strategy for Women's, Children's and Adolescents' Health" (2016), pp. 9-11.

[52] Commission on Information and Accountability for Women's and Children's Health, "Keeping promises, measuring results" (2011), p. 7.

persons with disabilities in order to prevent exploitation, violence and abuse. These mechanisms should include representative organizations of persons with disabilities and civil society, and should be able to access and monitor institutions while States move towards deinstitutionalization. This monitoring role should extend to mental health and community services to ensure that they are conducive to inclusion, participation and the overall enjoyment of rights on equal basis with others. When abuses in institutions are identified, States should, as required by article 16 of the Convention, take appropriate measures to "promote the physical, cognitive, and psychological recovery, rehabilitation and social reintegration of persons with disabilities who become victims of any form of exploitation, violence or abuse".

50. Other measures to promote accountability include the establishment of transparent, inclusive and participatory processes and mechanisms, with jurisdiction to recommend and enforce remedial action, in both the health and justice systems. Such mechanisms and processes include courts or quasi-judicial and non-judicial bodies, complaints mechanisms within the health system, national human rights institutions and professional standards associations.[53]

B. Good practices

1. Mental health care based on recovery

51. Community-based service delivery for mental health should encompass a recovery-based approach that places the emphasis on supporting individuals with mental health conditions in achieving their own aspirations and goals.[54] A recovery-based approach to mental health is centred on the strengths of the individual and on facilitating access to the supports he or she needs, it integrates an understanding of trauma and involves persons with lived experiences in mental health in the provision of services. This approach requires "listening and responding to individuals' understanding of their condition and what helps them to recover [and] working with people as equal partners in their care".[55]

52. Given the close relationship between mental health conditions and trauma, all mental health services should be "trauma-informed" and designed to avoid re-traumatization, and staff should be trained to recognize and refrain from engaging in practices that might trigger painful memories and re-traumatize persons with trauma histories.[56]

53. Finally, persons with mental health conditions are the foremost experts in their own recovery and in assisting others in their recovery. Peer workers provide each other with support and a sense of belonging, in addition to their expertise, thus reducing unnecessary admissions, and their use is central to mental health care.[57]

2. Community-based services

54. The Committee on Economic, Social and Cultural Rights has recommended that health facilities, goods and services be located within safe physical reach for all sections of the population, especially vulnerable or marginalized groups, such as persons with

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[53] Sanghera and others "Human rights in the new Global Strategy".

[54] WHO, "Mental health action plan", para. 50.

[55] Ibid.

[56] United States Department of Health and Human Services Substance Abuse and Mental Health Services Administration, "SAMHSA's concept of trauma and guidance for a trauma-informed approach" (July 2014), p. 10.

[57] See WHO, "Mental health action plan", para. 50.

disabilities.[58] Evidence shows that the provision of interdisciplinary and demedicalized services in the community enables users to remain connected with their families, to maintain employment and generally to remain close to the support networks which facilitate early treatment and recovery. Mental health services, particularly in more developed countries and, increasingly, in developing countries, are usually provided within specialized systems centred around psychiatric hospitals, in which many practices contradictory to the standards in the Convention on the Rights of Persons with Disabilities continue to take place. In order to guarantee the right to access to services for persons with mental health conditions and psychosocial disabilities, States should ensure the availability of recovery-based treatment in the community and in the primary care system.

3. Deinstitutionalization

55. The implementation of article 19 of the Convention on the Rights of Persons with Disabilities on the right to live independently and to be included in the community is essential for persons with psychosocial disabilities. The recovery approach is consistent with the purpose of supporting the person in all aspects of their life, personal development, exercise of autonomy and participation and inclusion in the community.

56. Ensuring that persons with disabilities choose where and with whom they live and upholding autonomy fosters inclusion in the community. Institutionalization and institutionalized living arrangements, whether in large facilities or smaller group homes, amount to segregation and are inconsistent with inclusion in the community. The Committee on the Rights of Persons with Disabilities has repeatedly expressed concern about the institutionalization of persons with disabilities and the lack of support services in the community, and has recommended implementing support services and effective deinstitutionalization strategies in consultation with organizations of persons with disabilities.[59]

57. Effective deinstitutionalization requires an understanding that the right to community living is more than just access to a physical placement in the community.[60] Social support for persons with psychosocial disabilities must be made available at the same time, including supported and assisted housing, health care, crisis response systems, income support, support for social networks and access to education and work.[61] Social networks, peer support, circles of support and local community support are valuable, in particular to address situations of crisis and emergency; they must be acknowledged and their development supported.

4. Children

58. At least 8 million children live in institutions.[62] The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has reported that institutional care in early childhood has such harmful effects that it should be considered a form of violence against young children.[63] In accordance with international human rights and good practice norms, States should (a) end the institutionalization of all children, with and without disabilities; (b) place a moratorium on

[58] See general comment No. 14, para. 12 (b).
[59] See, for example, CRPD/C/ESP/CO/1, paras. 35-36; CRPD/C/CHN/CO/1, para. 26; CRPD/C/ARG/CO/1, para. 24.
[60] Ibid.
[61] WHO and World Bank, *World Report on Disability* (2011), p. 148.
[62] See A/61/299, para. 55.
[63] See A/70/213, para. 73.

new admissions of children with disabilities into institutions;[64] (c) protect the right of children with disabilities to live in the community and the right of all children to grow up in a family;[65] (d) seek alternative family placement rather than any form of residential care for children who must be removed from their own family; [66] (e) as provided for under article 23 (5) of the Convention on the Rights of Persons with Disabilities, provide alternative care "within the wider family, and failing that, within the community in a family setting",[67] where the immediate family is unable to care for the child; and (f) ensure that deinstitutionalization in the case of children is focused on reintegrating them into a family rather than into a smaller institution.

5. Adequate standard of living

59. Housing and social protection policies, as envisaged in articles 19 and 28 of the Convention on the Rights of Persons with Disabilities, are essential for ensuring an adequate standard of living for persons with psychosocial disabilities. Assistance for housing and family and for the elimination of poverty, malnutrition and social exclusion has an overall positive impact on the physical and mental health of persons with psychosocial disabilities. In tandem with such measures, States should promote the inclusion of persons with psychosocial disabilities in the open labour market so that they are assured of an income. States should also raise awareness and provide technical guidance and support on how to provide reasonable accommodation for persons with psychosocial disabilities in the workplace.

C. Technical support and capacity-building

60. Articles 2.1 of the International Covenant on Economic, Social and Cultural Rights and 32 of the Convention on the Rights of Persons with Disabilities provide the main normative bases for technical support and capacity-building in the area of mental health. Under the Covenant, States have a duty to take steps through international assistance and cooperation, especially economic and technical cooperation, towards the progressive realization of the right to health. As noted by the Committee on Economic, Social and Cultural Rights, there is a particular obligation for States in a position to assist to provide this assistance to other countries.

61. With respect to persons with psychosocial disabilities, the following measures and activities are critical for strengthening technical assistance and capacity-building at the national level. They require the active engagement, participation, involvement and inputs of people with lived experience of psychosocial disabilities, and their representative organizations:

(a) Technical support to countries to develop and implement policies, plans, laws and services that promote and protect the rights of persons with psychosocial disabilities in line with international human rights standards including the Convention on the Rights of Persons with Disabilities;

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[64] United Nations Children's Fund, *The State of the World's Children*, p. 80.

[65] See, for example, CRPD/C/GTM/CO/1 and CRPD/C/CZE/CO/1.

[66] Eric Rosenthal, "A mandate to end placement of children in institutions and orphanages: the duty of governments and donors to prevent segregation and torture (2017). Available from https://www.law.georgetown.edu/academics/centers-institutes/human-rights-institute/our-work/research/upload/Perspectives-on-Human-Rights-Rosenthal.pdf.

[67] Ibid.

(b) Capacity-building among mental health practitioners, persons with psychosocial disabilities, families, carers and other supporters, civil society, lawyers, judges, police, social workers and others in order to promote a human rights, legal capacity and recovery-based approach in the area of mental health in line with the Convention on the Rights of Persons with Disabilities and other international human rights standards;

(c) Comprehensive technical guidance for countries which identifies, describes and evaluates existing and emerging community-based services and support that are responsive to the needs of persons with psychosocial disabilities and are in line with the Convention on the Rights of Persons with Disabilities;

(d) Support for the creation and strengthening of organizations led by persons with psychosocial disabilities and the facilitation of dialogue with Governments in order to facilitate their inclusion and participation in policymaking processes;

(e) Addressing the perpetuation of segregation, which may take the form of funding new institutions or refurbishing existing facilities, through the termination of resource allocations to these areas. Funding should be used to help families avoid placement of children in institutions and to create community-based support systems for persons with psychosocial disabilities.

VII. Conclusions

62. **Users of mental health services, persons with mental health conditions and persons with psychosocial disabilities are positioned at the confluence of many vulnerabilities, particularly those arising from poverty, stigma, discrimination, social isolation and segregation. A comprehensive approach to addressing their human rights situation requires the protection of autonomy, agency and dignity as well as the other human rights guaranteed by, inter alia, the Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights. It also requires policy shifts that recognize exclusion and marginalization as the causes and consequences of poor mental health and take seriously the commitment in the 2030 Agenda for Sustainable Development to leave no one behind and reach first those who are furthest behind. Consequently, in meeting their obligation to achieve the full realization of the rights of persons with mental health conditions, users of mental health services and persons with psychosocial disabilities, States should align the policy and legal framework with human rights norms, develop and implement rights-based strategies and plans, and share technical expertise and other resources, such as good practice norms.**